

(h) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of any subsidiary of New Mirant *provided* that the aggregate purchase price paid for all such repurchased, redeemed, acquired or retired Equity Interests shall not exceed \$[•] million in any 12-month period; and

(i) the repurchase of capital stock deemed to occur upon the exercise of options or warrants to the extent that such capital stock represents all or a portion of the exercise price thereof.

*“Affiliate Subordinated Debt”* means Debt of New Mirant which is subordinated to the obligations of New Mirant under the Series A Put Agreement and the Series B Put Agreement and which is owed to or held by an affiliate of New Mirant other than a subsidiary of New Mirant.

*“Consolidated Intangible Assets”* means the intangible assets of New Mirant and its consolidated subsidiaries as set forth on the balance sheet of New Mirant and its consolidated subsidiaries for the most recently ended full fiscal quarter for which internal financial statements are available, immediately preceding the date the date of determination; *provided* that if the aggregate capital stock and other equity accounts (including retained earnings and paid-in capital) of Consolidated MAG as set forth on the balance sheet of Consolidated MAG for such period exceed the intangible assets of Consolidated MAG on such balance sheet, then the intangible assets of Consolidated MAG shall be excluded from Consolidated Intangible Assets.

*“Equity Interests”* means capital stock and all warrants, options or other rights to acquire capital stock (but excluding any debt security that is convertible into, or exchangeable for, capital stock).

*“Tangible Net Worth”* means, as of the date of determination, (a) the consolidated aggregate capital stock and other equity accounts (including retained earnings and paid-in capital) of New Mirant less (b) Consolidated Intangible Assets as set forth on the balance sheet of New Mirant and its consolidated subsidiaries for the most recently ended full fiscal quarter for which internal financial statements are available, immediately preceding the date the date of determination; *provided, however*, that to the extent that the intangible assets of Consolidated MAG for such period exceed the aggregate capital stock and other equity accounts (including retained earnings and paid-in capital) of Consolidated MAG for such period, the aggregate capital stock and other equity accounts (including retained earnings and paid in capital) of Consolidated MAG shall be excluded from clause (a).

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**EXHIBIT E**

**NEW MIRANT WARRANT TERMS**

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**EXHIBIT “E”**

**TERMS OF THE NEW MIRANT WARRANTS<sup>1</sup>**

The New Mirant Warrants (Series A and B) shall include the following terms and features:

- (1) *Issuer*: New Mirant.
- (2) *Series A*: The Series A Warrants shall entitle the holders thereof to purchase a number of shares of New Mirant Common Stock equal to ten percent (10.0%) of the shares of New Mirant Common Stock issued, or reserved for issuance, under the Plan (excluding the Employee Compensation Shares).
- (3) *Series B*: The Series B Warrants shall entitle the holders thereof to purchase a number of shares of New Mirant Common Stock equal to five percent (5.0%) of the shares of New Mirant Common Stock issued, or reserved for issuance, under the Plan (excluding the Employee Compensation Shares).
- (4) *Entitlement*: Each Warrant shall entitle the holder to purchase a share of New Mirant Common Stock.
- (5) *Term*: The Warrants may be exercised individually or in the aggregate at any time until the fifth anniversary of the Effective Date (the “Termination Date”).
- (6) *Series A Cash Exercise Price*: Each Series A Warrant may be exercised by delivery of a cash payment (the “Series A Exercise Price”) to New Mirant at any time on or before the Termination Date in an amount equal to the per-share price that would be required for the consolidated enterprise value of New Mirant to be \$11.4 billion.
- (7) *Series B Cash Exercise Price*: Each Series B Warrant may be exercised by delivery of a cash payment (the “Series B Exercise Price”) to New Mirant at any time on or before the Termination Date in an amount equal to the per-share price that would be required for the consolidated enterprise value of New Mirant to be \$11.0 billion.
- (8) *Cashless Exercise*. Each Warrant may be exercised on a cashless basis based on the following formula:  $X = ((A - B) \times C) / A$ .

X = The number of shares issuable.

A = The current market price of the New Mirant Common Stock.

B = The Series A Exercise Price or the Series B Exercise Price, as applicable.

C = The number of shares for which a Warrant is being exercised.

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<sup>1</sup> Except as otherwise set forth herein, capitalized terms shall have definition ascribed thereto in the Plan.

(9) *Adjustments*: The number of shares of New Mirant Common Stock to be received upon exercise of a Warrant will be subject to adjustment upon the following events:

- (a) *Changes in capital stock*. Stock splits, stock dividends, reverse stock splits, stock recapitalizations and reclassifications of New Mirant Common Stock.
- (b) *Rights offerings*. Distribution to all holders of New Mirant Common Stock of rights, options, warrants or other securities exercisable for or convertible into New Mirant Common Stock at a price per share less than the then market price. The adjustment shall be based on the following formula:  $E' = E \times (O + ((N \times P) / M) / (O + N))$

$E'$  = the adjusted Series A Exercise Price or Series B Exercise Price, as applicable.

$E$  = the current Series A Exercise Price or Series B Exercise Price, as applicable.

$O$  = the number of shares of New Mirant Common Stock outstanding on the record date.

$N$  = the number of additional shares of New Mirant Common Stock offered.

$P$  = the offering price per share of the additional shares of New Mirant Common Stock.

$M$  = the current market price per share of New Mirant Common Stock on the record date.

- (c) *Other distributions*. Distribution to all holders of New Mirant Common Stock of any assets (other than ordinary cash dividends paid from earnings), debt securities, preferred stock or any options, warrants or other rights to purchase debt securities, assets or other securities of New Mirant; provided, that the foregoing shall not apply to any distribution referred to under (a) or (b) above. The adjustment shall be based on the following formula:

$$E' = E \times ((M - F) / M)$$

$E'$  = the adjusted Series A Exercise Price or Series B Exercise Price, as applicable.

$E$  = the current Series A Exercise Price or Series B Exercise Price, as applicable.

$M$  = the current market price per share of New Mirant Common Stock on the record date.

$F$  = the fair market value on the record date of the assets, securities, rights or warrants to be distributed in respect of one share of New Mirant Common Stock as determined in good faith by the board of directors of New Mirant.

No adjustment shall be required until the cumulative adjustment required as a result of such events requires an increase or decrease of more than 1% in the prevailing Series A Exercise Price or Series B Exercise Price, as applicable.

- (10) *Change of Control Events:* Upon consolidation or merger, sale of all or substantially all of the assets of New Mirant or a successful tender for at least 80% of the then-outstanding New Mirant Common Stock, the New Mirant Warrants shall be exercisable for the amount of securities, cash or other assets that holders of the Warrants would have acquired if exercised immediately prior to such event. Alternatively, the holders of New Mirant Warrants shall be offered the opportunity to receive a payment equal to the Black-Scholes valuation of the warrants, using a 30% volatility; provided, that if such change of control event occurs after the third anniversary of the Effective Date or is for common equity securities that are registered under the Securities Exchange Act of 1934, then the warrant holders shall not be afforded this opportunity.
- (11) *Notice:* The Warrants shall contain customary provisions for notice before an event that would require an adjustment of the exercise price and customary provisions regarding certain records dates, dividends, extraordinary transactions and liquidation events.
- (12) *Listing:* New Mirant will use commercially reasonable efforts to (a) establish and maintain the registration of the New Mirant Common Stock and the New Mirant Warrants under the Securities Exchange Act of 1934, and (b) list the Warrants on the same exchange or over-the-counter market as the New Mirant Common Stock, or if the Warrants cannot be listed on such exchange or over-the-counter market, any other exchange or over-the-counter market acceptable to New Mirant's board of directors; provided, that it shall not be required to do so if the Warrants do not meet applicable listing requirements.
- (13) *Transferability:* The Warrants shall be freely transferable to the same extent as the New Mirant Common Stock (e.g., the New Mirant Warrants shall be subject to the same post-Effective Date transfer restrictions as the New Mirant Common Stock).
- (14) *Voting and Dividends.* Until a New Mirant Warrant is exercised, the holder thereof, shall have no rights as a shareholder of New Mirant, including, without limitation, the right to vote or to receive dividends or to participate in any transaction that would give rise to an adjustment as contemplated by (9), above.
- (15) *Redemption.* The New Mirant Warrants shall not be redeemable by New Mirant or any other Person.

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